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BANK OF AMERICA, N.A.,  
AETNA LIFE INSURANCE COMPANY and  
BANK OF AMERICA GROUP BENEFITS PROGRAM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN EMERSON,

Plaintiff,

v.

BANK OF AMERICA, N.A., a Delaware  
Corporation, BANK OF AMERICA GROUP  
BENEFITS PROGRAM, AETNA LIFE  
INSURANCE COMPANY and DOES 1-20,  
inclusive,

Defendants.

Case No. cv-10-04919 SI

**STIPULATION AND [PROPOSED]  
ORDER CONTINUING PRETRIAL  
PREPARATION AND TRIAL  
SCHEDULE**

Dept.: Courtroom 10, 19<sup>th</sup> Floor  
Judge: Hon. Susan Illston

Complaint Filed: 9/14/10  
Second Amended Complaint Filed: 3/11/11

Plaintiff and Defendants, through their respective counsel of record herein, submit the  
following Joint Stipulation Amending the Pretrial Preparation and Trial Scheduling Order:

Background

1. On October 14, 2011, the Court issued its Pretrial Preparation order in the above-

1 Entitled matter setting a further Scheduling Conference for February 3, 2012, at 3:00 p.m., which  
 2 also set forth the following pretrial preparation / trial plan:

3 “Discovery Plan: Per F.R.Civ.P and Local Rules, subject to any provisions below:

4 Non-Expert Discovery Cutoff is March 30, 2012.

5 Designation of Experts: 4/2/12; Rebuttal: 4/20/12. Parties (**SHALL** conform to Rule  
 6 26(a)2). (Emphasis in original order.)

7 Expert Discovery Cutoff is May 14, 2012.

8 Dispositive Motions SHALL be filed by May 25, 2012. (Emphasis in original order.);

9 Opp. Due June 8, 2012; Reply Due June 15, 2012;

10 And set for hearing no later than June 29, 2012 at 9:00 A.M.

11 Pretrial Conference Date: August 14, 2012 at 3:30 P.M.

12 Jury Trial Date: August 27, 2012 at 8:30 A.M., Courtroom 10, 19<sup>th</sup> floor.

13 Trial Length is estimated to be \_days.

14 Special discovery and Pretrial Provisions:

15 This case shall be referred to the Court’s mediation program.”

16 2. On April 6, 2012, in response to Defendant’s motion for an order shortening time to hear  
 17 Defendants’ motion to strike Plaintiff’s expert witness disclosure, Honorable Susan Illston entered  
 18 an Order Denying Defendants’ Motion for Order Shortening Time and Modifying Disclosure Dates,  
 19 which stated in part, as follows:

20 “. . .The Court DENIES defendant’s request to shorten time. The Court also accepts as  
 21 timely the filing of plaintiff’s designation, and will permit plaintiff to file the expert report by April  
 22 20, 2012. The parties are directed to meet and confer regarding a modification of the deadline for  
 23 rebuttal disclosures and rebuttal expert reports.” (Order dated April 6, 2012, p.2:7-11.)

24 3. As part of the consideration for the issuance of the Court’s Order on April 6, 2012, and  
 25 as stated in the Declaration of James S. Rummonds filed in opposition to Defendants’ Motion for  
 26 Order Shortening Time, (Doc 59) the Court took into consideration that Plaintiff’s counsel stated  
 27 *inter alia* in his declaration that the attorney who had been working on the case became seriously ill  
 28 and on April 1, 2012, informed him that she “would immediately be relieving herself of all

responsibilities for any case she was working on” in his office “due to medical reasons . . . “  
 (Opp’n at 1:26-27). Plaintiff’s counsel also stated that he had been out of the office for much of the  
 last several months attending to his 98 year old mother, who is dying.

4. Since the issuance of Judge Illston’s April 6, 2012 Order, above referenced, the parties,  
 through their respective counsel, have met and conferred as directed in the April 6, 2012 Order, and  
 have stipulated and agreed on the following amended scheduling plan, given the extraordinary  
 circumstances presented recently to Plaintiff’s counsel, James S. Rummonds.

#### PROPOSED AMENDED CASE SCHEDULE

The parties jointly propose the following case schedule:

Discovery Plan: Per F.R.Civ.P and Local Rules, subject to any provisions below:

Non-Expert Discovery Cutoff is March 30, 2012.

Designation of Experts: **4/2/12**: Expert Reports due **June 1, 2012**; Rebuttal: **June 15,**  
**2012**. Parties (**SHALL** conform to Rule 26(a)2).

Expert Discovery Cutoff is July 2, 2012.

Dispositive Motions SHALL be filed by July 16, 2012.

Opp. Due July 30, 2012;

Reply Due August 13, 2012

And set for hearing no later than August 27, 2012 at 9:00 A.M.

Pretrial Conference Date: October 8, 2012 at 3:30 P.M.

Jury Trial Date: October 22, 2012 at 8:30 A.M., Courtroom 10, 19<sup>th</sup> floor.

Trial Length is estimated to be 8 days.

Special discovery and Pretrial Provisions:

The parties shall complete the Court’s mediation program, a first session which has  
 already been held with Eric Ivary, Esq.

DATED: April 18, 2012

RUMMONDS & MAIR  
 An Association of Attorneys

By: /s/ James S. Rummonds  
 James S. Rummonds, Esq., Attorneys  
 For Plaintiff JOHN EMERSON

DATED: April 18, 2012

LAFAYETTE & KUMAGAI, LLP

By: /s/ Rebecca K. Kimura  
Rebecca K. Kimura, Esq.  
Attorneys for Defendants BANK OF  
AMERICA, N.A., AETNA LIFE  
INSURANCE COMPANY, and BANK OF  
AMERICA GROUP BENEFITS PROGRAM

**[PROPOSED] ORDER**

Pursuant to the Stipulation above, it is hereby **ORDERED** that:

Discovery Plan: Per F.R.Civ.P and Local Rules, subject to any provisions below:

Non-Expert Discovery Cutoff is March 30, 2012.

Designation of Experts: **4/2/12**: Expert Reports due **June 1, 2012**; Rebuttal: **June 15, 2012**. Parties (**SHALL** conform to Rule 26(a)2).

Expert Discovery Cutoff is July 2, 2012.

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And set for hearing no later than August 27, 2012 at 9:00 A.M.

Pretrial Conference Date: October 8, 2012 at 3:30 P.M.

Jury Trial Date: October 22, 2012<sup>29</sup> at 8:30 A.M., Courtroom 10, 19<sup>th</sup> floor.

Trial Length is estimated to be 8 days.

IT IS SO ORDERED.

DATED: 4/18/12

  
\_\_\_\_\_  
Judge Susan Illston  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of this document was served electronically on April 18, 2012 on counsel of record in compliance with Federal Rule 5, Local Rule 5.6 and General Order 45, by use of the Court's EFC system.

/s/ James S. Rummonds

James S. Rummonds